

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

CONSOLACION B. SNIPES,
Appellant,

v.

OFFICE OF PERSONNEL MANAGEMENT,
Agency.

DOCKET NUMBER
AT08318610464

DATE: JAN 07 1987

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman
Dennis M. Devaney, Member

OPINION AND ORDER

The appellant's petition for review of the administrative judge's initial decision of June 6, 1986, which affirmed OPM's decision terminating the appellant's disability retirement annuity, was postmarked July 14, 1986. The deadline for filing the petition for review was July 11, 1986. See 51 Fed. Reg. 25,157 (1986) (to be codified at 5 C.F.R. § 1201.114(d)).* By letter of July 31, 1986, the appellant

* On July 10, 1986, the Board republished its entire rules of practice and procedure in the Federal Register. For ease of reference, citations will be to the Board's regulations at 5 C.F.R. Part 1201. However, parties should refer to 51 Fed. Reg. 25,146-72 (1986) for the text of all references to this part.

was given the opportunity to show good cause for the late filing under 5 C.F.R. § 1201.114(f).

In response to the show cause request, the appellant submitted copies of envelopes from the Department of Labor postmarked July 8, 1986, and July 9, 1986, to verify her late receipt of a copy of an October 1985 medical report. She also submitted copies of her phone bill which she alleged showed long distance calls to the Department of Labor to obtain the medical report. We are unable to determine which calls, if any, were made to the Department of Labor, and, in any event, neither the calls nor the envelopes establish good cause for the untimely filing.

The appellant has not presented evidence to show that, despite due diligence, the medical report could not have been obtained prior to the deadline for the filing of the petition for review; indeed, she has not shown why it could not have been obtained prior to the close of the record before the administrative judge. See *Burkins v. Department of Transportation*, 25 M.S.P.R. 23 (1984); *Oesterich v. Department of the Air Force*, 7 M.S.P.R. 355 (1981); *Alonzo v. Department of the Air Force*, 4 M.S.P.R. 180, 184 (1980). The appellant's submissions show that she was advised by the examining physician on January 14, 1986, that a copy of the report could only be obtained from the Department of Labor. There is no evidence of the prompt submission of either a written or telephonic request for such report; further, the appellant never requested an extension of time from the administrative

judge or the Board for the obtaining and filing of the report and has not given any reason for her failure to request such an extension. See 5 C.F.R. § 1201.174 (f).


Accordingly, the appellant's petition for review is hereby DISMISSED as untimely filed.

This is the Board's final order on the timeliness issue. The initial decision remains the final decision of the Board on the merits of this appeal.

NOTICE TO APPELLANT

You may petition the United States Court of Appeals for the Federal Circuit to review the Board's decision in your appeal, if the court has jurisdiction. 5 U.S.C. § 7703. The address of the court is 717 Madison Place, N.W., Washington, D.C. 20439. The court must receive the petition no later than thirty days after you or your representative receives this order.

FOR THE BOARD:


Robert E. Taylor
Clerk of the Board

Washington, D.C.